

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF OREGON
3 THE HON. ANN AIKEN, JUDGE PRESIDING
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6 UNITED STATES OF AMERICA,)
7 Government,)
8 v.) No. 6:09-cr-60167-AA-7
9 JEFFREY SPRAGUE,)
10 Defendant.)
11 _____)
12

13 REPORTER'S TRANSCRIPT OF PROCEEDINGS
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21 Kristi L. Anderson
22 Official Federal Reporter
23 United States Courthouse
24 405 East Eighth Avenue
25 Eugene, Oregon 97401
(541) 431-4112
Kristi_Anderson@ord.uscourts.gov

1 APPEARANCES OF COUNSEL:

2
3 FOR THE GOVERNMENT:

4 Scott E. Bradford
5 United States Attorney's Office
6 405 E. Eighth Avenue
7 Suite 2400
8 Eugene, OR 97401
(541) 465-6741
9 Fax: (541) 465-6314
10 Email: scott.bradford@usdoj.gov

11 FOR THE DEFENDANT:

12 Marc P. Friedman
13 Marc P. Friedman, Attorney at Law
14 245 West 13th Avenue
15 PO Box 11167
16 Eugene, OR 97440
17 (541) 686-4890
18 Fax: (541) 344-6254
19 Email: attyfriedman@yahoo.com
20
21
22
23
24
25

PROCEEDINGS

THURSDAY, DECEMBER 12, 2013

THE CLERK: Next on the docket is sentencing in United States versus Jeffrey Sprague, Case No. 09-60167.

MR. FRIEDMAN: Good afternoon, Your Honor.

MR. BRADFORD: Good morning, Your Honor, or good afternoon, Your Honor. Scott Bradford on behalf of the United States.

In this case, the parties agree to the guidelines calculations and the restitution amount, and the only issue left before the court, I believe, is the -- over which we will argue is the appropriate sentence in this case.

THE COURT: The restitution, as I note in my documents, is 3,606,113.80.

MR. BRADFORD: Correct.

MR. FRIEDMAN: That is correct. That's what we stipulated to, Your Honor.

THE COURT: Okay.

MR. BRADFORD: Much of what I said with Ms. Ausbrooks applies here in this case about Mr. Sprague being -- I don't want to repeat a lot of it because it does apply equally, perhaps more so in this case because he was a loan officer, a step above an escrow officer, and he actively participated in the fraud that was promoted within the DSD employee house program. And I don't want to get

1 into the weeds and debate the facts here. Those have been
2 briefed pretty well in the statement of facts and in the
3 sentencing submissions.

4 Again, I think it's just important to note that
5 with individuals like Mr. Sprague, they could have stopped
6 this or at least some of the harm had they called. Had they
7 called the Oregon Division of Finance and Corporate
8 Securities, the body that regulates on the state level
9 mortgages and loans and mortgage brokers and said we found
10 all these forgeries in these loan files, we found all these
11 scanned signatures, and we know that Desert Sun Development
12 is seasoning bank accounts for participants, you need to
13 investigate and look at this, the harm could have been
14 stopped both on the commercial side of the Desert Sun case
15 because I am sure authorities would have looked at that as
16 well as on the residential side.

17 The system needs its gatekeepers like Mr. Sprague
18 and -- to follow Mr. Little, to stand up and do their job.
19 Their job is to stand up and say stop, enough, this is fraud
20 and I am not going to participate in it. Regardless of what
21 supervisors may or may not have told them, it's still their
22 responsibility as a gatekeeper to say stop.

23 The one thing that I can note for Mr. Sprague is
24 not only did he not say stop, not only did he help push
25 these dirty loans through when he knew about them, helped

1 them close, but he also helped inflate the income on those
2 loan applications. It's not just that he went with Desert
3 Sun Development's misrepresentations and omissions, he
4 contributed to it as well by inflating the incomes. And in
5 his memorandum, you can read where it reads that he
6 didn't -- he put in the numbers that would help the loans
7 work and that he wouldn't ask the borrowers whether that
8 amount was accurate because if he did and they said no, he
9 would have to change it.

10 And in many of the loan files, the borrowers had
11 given Mr. Sprague accurate loan information -- accurate
12 income information. Excuse me. In one instance, one
13 borrower told him that he only made approximately 4,000 per
14 month, and what did Mr. Sprague put down for the income?
15 10,000 per month to make the loan work.

16 So not only do we have a gatekeeper not saying
17 stop, enough, I am going to protect the integrity not only
18 of my institution but of the industry in which I work, he
19 actively participated in it.

20 And I think the motivation is pretty clear. It
21 was in the defense exhibits. His commission checks. In
22 some years they were six figures. Now, I will note for the
23 record in fairness that in the end, he didn't get all that
24 money because he got fired, so West Coast Bank didn't pay
25 him the full amount, if any, of the last large commissions,

1 but that was clearly his motivation.

2 I think when the court looks at all the facts in
3 this case, with the comments I just stated, and I don't want
4 to belabor these points, I think a dialogue with Mr. Sprague
5 will be helpful to see where he's at today and listening to
6 Mr. Friedman's comments, but I don't think we can understate
7 the harm that Mr. Sprague not only committed himself but
8 allowed to happen willingly.

9 Restitution is \$3.6 million. That is a large --
10 very large number, and he has agreed that his criminal
11 conduct contributed to that or caused that.

12 It's hard to understate what could have happened
13 had Mr. Sprague stopped the fraud.

14 I think it's also important to note Mr. Sprague's
15 cooperation. The government cannot give him any cooperation
16 at this date because he was the last defendant to plead
17 guilty and participate in a debrief. I can't give him
18 anything if he was the last one through the door and didn't
19 give us any useful information to use going forward.

20 I will note that since he has pled guilty, he has
21 debriefed in another ongoing investigation, and if his
22 information proves useful, proves fruitful, the government
23 will, like it always does, file a Rule 35 motion. But that
24 is going to be a long ways down the road. The court knows
25 that these fraud investigations can take time, sometimes

1 years. So we will honor our obligation if that information
2 proves useful, but at this time today I cannot award any
3 cooperation points. I just wanted the court to be aware of
4 the government's position and why it is.

5 So based on that, the government -- or based on
6 the comments that I have made today, our sentencing
7 memorandum, the PSR, the information contained in the PSR,
8 we believe a reasonable but not greater than necessary
9 sentence for Mr. Sprague, a gatekeeper, is 46 months
10 imprisonment, five year -- or excuse me, three years of
11 supervised release and a restitution award in the amount of
12 \$3,606,113.80. And that should be, Your Honor, joint and
13 several with defendants Fitzsimons, Egeland, and Kendall.

14 Unless the court has any questions --

15 THE COURT: No.

16 MR. BRADFORD: -- I would tender my time.

17 THE COURT: Counsel.

18 MR. FRIEDMAN: Good afternoon, Your Honor. I
19 presume the court had an opportunity to review our
20 sentencing memo and --

21 THE COURT: I have read the sentencing memo and I
22 watched the video.

23 MR. FRIEDMAN: I appreciate that, Your Honor,
24 greatly.

25 Your Honor, I am struggling here because I am not

1 really sure that I can convey to this court what a decent
2 man Jeffrey Sprague is, and yet he stands here convicted by
3 his plea of conspiracy to commit bank fraud.

4 He's a criminal -- the fact that he is a criminal,
5 rather, is far from the truth of the man that he is.

6 THE COURT: I don't think that's ever a struggle,
7 ever, because I tell people all the time we judge them for
8 their acts. It doesn't have anything to do with who they
9 are as people.

10 MR. FRIEDMAN: I appreciate that, Your Honor.

11 THE COURT: I have defendants who stand her in
12 horror and shame and think they are the scum of the earth.
13 They aren't dressed in nice suits with a tie and a shirt.
14 They just think they are hated by everybody. And I tell
15 them I'd cheer for you to be successful. I don't like your
16 behavior, and punishing for your behavior has nothing to do
17 with who you are as a person.

18 So there's -- I saw his two kids. He has great
19 kids. He has great friends.

20 MR. FRIEDMAN: I just want to point --

21 THE COURT: There are a bunch of people here. He
22 has lots of great people, great friends, and he is -- as I
23 recall, he is all tied to them through a church or an
24 expectation of a Christian belief system, correct?

25 MR. FRIEDMAN: That's certainly a large part of

1 it, Your Honor. He has got a close-knit family. He has
2 some sincere, deep friendships.

3 THE COURT: Um-hmm.

4 MR. FRIEDMAN: And a lot of it is because of the
5 good works that he has done, both works that he had done
6 long before these incidents ever occurred --

7 THE COURT: Right. The shower --

8 MR. FRIEDMAN: -- and what he has been doing for
9 the last years.

10 THE COURT: Absolutely. The shower truck is an
11 amazing invention. He is a very skilled guy. That doesn't
12 mean that it's a Christian thing to inflate somebody's
13 income and put them into a loan that they can't really
14 afford to do. That's -- you know, that's a choice. That
15 flies against what would be those tenets.

16 MR. FRIEDMAN: Certainly.

17 THE COURT: And that would be a contrary act to
18 what everyone states is an important value and why they are
19 his friend. So that's something that's to be -- that's a
20 redress to be handled in a court of law because you can be a
21 really good person and still make mistakes, and then it has
22 to do with whether your community, how you are regarded in
23 that and how your community treats you as you pay your debt
24 to society.

25 MR. FRIEDMAN: I know that this court is well

1 aware of the circumstances of -- both in this case and in
2 some of the -- in the circumstances that happened in
3 Deschutes County in the mid -- in the mid-2000s, and the
4 court knows what's gone on in terms of the banking industry
5 through the middle 2000s in terms of basically an industry
6 gone wild.

7 And I think it's important to understand sort of
8 that context how Mr. Sprague ends up here because the piece
9 of it is that particularly he was employed by West Coast
10 Bank, and as much as any of the banks, they were there
11 trying to take advantage of a market that seemed to have no
12 limits. And the piece of it is -- and this is -- this is
13 the part that I think Mr. Sprague has struggled with,
14 certainly what I have struggled with, and even in terms of
15 Mr. Sprague's cooperation in this case it's part of it
16 because what he was doing in his role as a loan officer, he
17 was following the directives that were in place.

18 The reason I submitted, Your Honor, the commission
19 statements from the years 2005, 2006, and 2007 is because it
20 was clear that what -- Mr. Sprague was making a good living
21 based upon the number of loans, based upon the policies that
22 West Coast Bank had put into place. And in particular, this
23 loan process, this two-step loan process, which was
24 basically designed to sort of beat the market in terms of
25 attractive loans, and they had hot competition, obviously.

1 We know Columbia River Bank was part of that competition.
2 There were a number of others, some of them in business,
3 some of them not anymore. But that was part of it.

4 And so, you know, should Mr. -- you know, one of
5 the things that I mentioned in my memo and I want to mention
6 again here is that it was Mr. Sprague and Ms. Hotchkiss, his
7 assistant, that initially discovered the signature frauds on
8 some of the applications. And what they did was what they
9 believed was the appropriate thing to do is they reported it
10 to their managers, to the supervisors at West Coast Bank.
11 And it was because of their report that an investigation was
12 started by the bank.

13 Should they have in fact contacted other agencies
14 outside the bank? In hindsight, absolutely. They didn't do
15 that because they presumed that the bank would do the
16 investigation and things would follow course. And
17 apparently they did. The problem was the bank decided to do
18 its own internal investigation and basically keep the fruits
19 of that investigation to themselves.

20 One of the struggles -- one of the reasons why
21 there's been difficulty in terms of providing cooperation to
22 the government here is what we attempted to do through the
23 course of this case was try and get those records from West
24 Coast Bank and were stymied at every effort. The sole
25 document we finally received through Judge Coffin was a

1 report, the original report that Mr. Sprague had submitted
2 that outlines all of these irregularities with regard to the
3 loans.

4 So it wasn't -- it's not as if that he wasn't
5 trying to cooperate. He was doing -- first, from the very
6 beginning, was doing what he was supposed to have done in
7 terms of the bank.

8 The other thing that struck me, I was here
9 yesterday for Mr. Fitzsimons' sentencing, and one of the
10 things that Mr. Bradford pointed out to the court with
11 regard to Mr. Sprague was that when Mr. Sprague was
12 initially interviewed by the FBI agents, by I believe Agent
13 Dougherty, but I am not sure about that, he acknowledged
14 what he had done. Mr. Bradford indicated that he confessed.

15 The fact is that in Mr. Sprague's mind, he didn't
16 understand that there was a criminal -- that he had done
17 some criminal wrong. It took a long time in terms of both
18 understanding what was going on with the bank and
19 understanding this overall case for him to understand where
20 his wrongdoing was, where his failures were, and he
21 appreciates that now.

22 But it's not been a situation where he simply
23 tried to sit back and not do anything. And again, as
24 Mr. Bradford's pointed out, apparently there now is another
25 investigation that is focused upon West Coast Bank and

1 focused, I believe, on some of the other players.

2 MR. BRADFORD: Your Honor, I don't want him to
3 disclose the nature of the investigation, where it's going
4 here in open court.

5 MR. FRIEDMAN: And I apologize. I will not say
6 anything further. But he has attempted to cooperate.

7 Again, you know, to point to Mr. Sprague as a
8 gatekeeper, I can certainly appreciate that, and I can
9 certainly appreciate that he does have that role, but it
10 elevates his role far above what it really was.

11 He was in a position where he was following the
12 directives of his superiors. He was following policies that
13 were in place. He was reliant, to his grave misfortune
14 today, upon a review process that wasn't happening. Even in
15 terms of these loan applications where there's talk about
16 fudging that, a part of it is just this automated system,
17 and I think there was some discussion in the testimony a
18 little earlier of the automated system in place that
19 automatically kicks out income numbers.

20 Again, you know, we had these ridiculous loans.
21 And I know that the court appreciates this. That when you
22 have a process that allows for a person to simply have a
23 stated income loan and you are relying upon that person, the
24 loan officer is in a position that they are not supposed to
25 say, show me what's real. That's what was there. And

1 again, it's into this market that Mr. Sprague was working,
2 and again, you know, he seemed to be rewarded for his work.
3 He was getting good pay and he was working hard.

4 And again, you know, Your Honor, and I don't think
5 counsel would argue this point, where Mr. Sprague is and
6 where people like Mr. Fitzsimons and Mr. Egeland and
7 Mr. Kendall, who were part of the Desert Sun operation is,
8 they are worlds apart. These people -- you know,
9 particularly Fitzsimons and Egeland, it appears, were buying
10 toys, buying cars, buying all sorts of things from money
11 that should have been put into homes.

12 The only -- Mr. Sprague never got a dime out of
13 any of the Desert Sun, and the only money that he ever had
14 was money that he earned from his work, from his being
15 constantly at it, probably to the point, again, to his
16 detriment today, to his overwork in terms of trying to
17 handle too many loans.

18 You know, what's interesting to note is that when
19 Desert Sun first came to West Coast Bank and specifically to
20 Mr. Sprague, they presented him with a packet of -- a
21 package of 22 loans. Of those loans, even going through the
22 process that was in place, only nine of those loans were put
23 through the process, and ultimately all eight of those loans
24 closed. And those are the first eight that are part of the
25 restitution in this case.

1 Did he fail to exercise due diligence? Yes. No
2 doubt about it. He was reliant, as I have said, upon the
3 processes that were in place; relied upon his loan
4 assistant, who he doesn't blame. I mean, she was doing her
5 job and just sort of pushing this paper through; relied upon
6 the underwriters, again, based upon a system that was in
7 place.

8 I have indicated that, you know, Mr. Sprague is
9 here really for two reasons. He screwed up. He should have
10 done more. He should have been diligent. He should have
11 realized that something was too good.

12 He is also here because the bank has left him
13 hanging out to dry. Your Honor, as I have indicated and
14 obviously you are aware and you have read through the
15 memorandum, Mr. Sprague is a talented man. He is both a
16 musician and a skilled carpenter. He has used those skills
17 to benefit others, not himself. He is deeply committed to
18 his family and to his community.

19 He has some health issues that have arisen in the
20 past year as a result of an injury that he sustained through
21 a fall while working. He has actually made some remarkable
22 recovery but still has potentially some additional surgery
23 that's required.

24 I know it's hard. I know what I am asking the
25 court to do is perhaps asking for too much, but it seems

1 appropriate here. Incarceration of Mr. Sprague serves no
2 useful purpose. It certainly isn't going to promote or
3 facilitate the payment of the restitution which is due and
4 for which Mr. Sprague acknowledges his responsibility.

5 And I hope that it's clear to this court that he
6 is not a threat to the community. Although he is a felon
7 and will be classified as a felon for the rest of his life,
8 he is not a criminal. He is not somebody at heart who is
9 going to -- he is not going to cause any further harm. He
10 is going to abide by any -- each and every term that this
11 court imposes as a condition of his post-prison supervision
12 or probation, which is what we would ask the court to
13 consider. He has done so on his pretrial release without
14 any problems, and I would note that he has been off of any
15 direct supervision for many, many years now as this case has
16 progressed.

17 What we are asking this court to consider is home
18 confinement rather than jail. That would allow him to work.
19 He has work available to him. That would allow him to pay
20 towards the restitution. We believe that that would be an
21 appropriate sentence in this case.

22 And as we have said, Mr. Sprague stands willing to
23 continue to cooperate.

24 And the one other thing that we would note, and,
25 again, I am not familiar enough with this to know if this

1 would be a factor or not, that because a number of the other
2 defendants, if he were incarcerated, are likely to all be
3 sent to Sheridan, I don't know whether it still is BOP's
4 policy to not have codefendants placed within the same
5 facility. If Mr. Sprague were incarcerated, obviously he is
6 asking for a placement for the Sheridan Camp. But if he
7 weren't sent to the camp, if he weren't sent to Sheridan,
8 that would cause a great, great hardship for his family. So
9 that's what we have.

10 Thank you.

11 THE COURT: Do you need to respond?

12 MR. BRADFORD: Yes, Your Honor. Thank you for
13 permitting some time for that.

14 I am going to focus my comments simply on what
15 Mr. Friedman talked about, the bank's lending practices and
16 what happened at the bank. We have heavily reviewed West
17 Coast Bank's lending practices during this time. Were they
18 lenient? Sure. But nowhere can I find that it was either
19 part of the practice or the culture for a loan officer --
20 where it was permitted for a loan officer not just to push
21 through a bad loan or sit silently and push through numbers
22 he knew not to be true but to actively participate in that
23 fraud himself like Mr. Sprague did.

24 He said that he worked backwards, inflating income
25 to help people get qualified for loans. And when he wrote

1 his letter, his report telling everybody at the bank what
2 had happened with the DSD loans, the nine loans he closed,
3 it was done in June. Those loans closed on May 3rd and 4th,
4 2007. His report went up in June 2007.

5 On April 30th of 2007, Mr. Sprague learned that
6 all those files, aside from his own fraudulent conduct in
7 inflating the incomes, were full of forgeries and scanned
8 signatures and seasoned bank accounts. And yet three days
9 later, he allowed all of them to close, May 3rd and 4th,
10 those nine loans to close. And again, he didn't tell his
11 superiors. He may have talked about the forgeries and the
12 scanned signatures, but he sure didn't tell them that he
13 also participated in the fraud.

14 And when he wrote his report in June 2007, he
15 talked about those scanned signatures and forgeries, but he
16 didn't talk about his part in the fraud in inflating the
17 income figures. As I said before, Your Honor, it wasn't
18 knocking up 4,000 a month to 4200 a month. He knocked up
19 4,000 a month to 10,000 a month, a dramatic difference.
20 These borrowers were not qualified to get these loans, and
21 Mr. Sprague knew it. And if the court looked at those
22 commissions, the proposed commission for Mr. Sprague in
23 2007, I believe it was \$200,000 in commissions, a 100 for
24 one part and a 100 for another part. And those were the
25 years that the DSD EHP loans came to him or that was the

1 year in which those loans came to him in which he closed
2 those loans. And let's not forget, he closed Shannon
3 Egeland's monstrosity, that \$1.9 million dollar,
4 22,000-square-foot home out in Powell Butte. That's one of
5 those nine loans that he was responsible for.

6 I just wanted to clarify that the bank's lending
7 practices, while lenient, in no way encouraged or permitted
8 outright fraud on the loan officer's part or any part, for
9 that matter, that we can determine.

10 Now, whether there was a culture of fraud and
11 somebody else knew about it, things are being done, but
12 we'll have to wait and see.

13 THE COURT: Mr. Sprague, have you had a chance to
14 read the presentence report?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Any additions or corrections you want
17 to call the court's attention to?

18 THE DEFENDANT: No, ma'am.

19 THE COURT: Anything you want to tell me before I
20 impose the sentence in this case?

21 THE DEFENDANT: Yes, ma'am. During this time --
22 excuse me. I am scared. I am in an uncomfortable place.

23 First of all, I just want to thank you for letting
24 me be here. But I want to say that as far as
25 accountability, I can't stand here and blame the bank. I

1 can't blame Tyler Fitzsimons, Shannon Egeland, incorrections
2 in paperwork, or anything else that might have come as
3 evidence for you to see as far as the paperwork side of it.

4 I sat in a position at the bank. Unfortunately, I
5 thought I was really good at what I did; to find out later
6 that I was a very unprepared and untrained person and
7 cooperating in -- just in a system. Everything was done the
8 same way and you pushed it through. And the pace in which I
9 started in this job before I was promoted to this position,
10 I was the healthy five-loan-a-month guy. And I was doing
11 okay with that. And before I knew it, there was 20, 30, 40
12 transactions a month coming across my desk. And so the only
13 way to control something like that is just to create a
14 system and try to keep everything in order as it went and
15 rely on support staff and rely on the computer-based
16 software that we had.

17 I should have asked a lot of questions. I was
18 given a lot of praise as the new guy making a lot of money
19 for the bank. I was told by the CEO of the bank if there's
20 anything we can do for you, anything you want, we'll do it.
21 Keep doing what you are doing. Keep bringing more business
22 in. And down to the silliest thing, I had a sore back and
23 they bought me a 1,200-dollar chair to make sure I could
24 still work.

25 In those type of accolades, just like I looked for

1 in the past with my father, when he said, I am proud of you,
2 son, I jumped farther. I went farther and I did more than
3 he ever asked for, and sometimes he would even say slow
4 down, you know, you are okay.

5 With those accolades, I continued to serve in the
6 best ability that I could. It was my goal to excel in that
7 position because I wanted the trophy two years in a row, the
8 \$500 debit card to say congratulations and a little glass
9 trophy. It didn't take much in my situation.

10 But I am sorry that I didn't ask those questions
11 that I should have asked and I could have asked. When I
12 asked the smallest questions of do you see this, this fraud
13 or do you see these signatures prior to them going to
14 escrow, while they were with underwriters, they said don't
15 worry. Just keep working. Our legal department says this
16 is okay. Just keep working. And I kept working. Even with
17 the confusion, I didn't ask more questions.

18 I felt that I did my due diligence to report
19 things to the people that are bigger than I have ever dealt
20 with. I have never had to call a CEO of a bank. But again,
21 I have never had to call Mr. Dougherty to say I wouldn't --
22 I wouldn't know to call Mr. Dougherty. I didn't know that
23 was something you did. And I didn't ask the questions to
24 make that available, so it was pushed under the rug in that
25 situation. And for that, again, I apologize.

1 I don't want to be the guy that you said you are a
2 criminal, you had criminal intent to do things. It's hard
3 to say, but I was kind the dumb guy in all this when it all
4 comes down to it because I didn't shine in a way that you
5 think you would. Money was never my motivator, Your Honor.
6 I lived -- I never had a new car. I never had a new house.
7 I gave a lot of money to my mother and the missions. I gave
8 a lot of money to help my family that didn't have money.

9 But the accolades I got and the trophies I got or
10 whatever it was made me very happy and motivated me to move
11 on and keep doing my job. 12, 13, 14-hour days were not a
12 big deal.

13 My kids were happy. They were living their lives
14 well. And at that time of my life, I didn't have full
15 custody of my children, so I could work hard and be
16 invisible for a long time knowing they were coming on
17 certain weekends or certain weeks, and I could concentrate
18 and focus on them during that time. I had to relax my work
19 schedule. I do remember on one vacation my kids did turn to
20 me and said, dad, can you just put the phone away. And
21 unfortunately, that's something I only thought I'd ever see
22 on TV in a movie of a bad dad. And I put my phone away. I
23 didn't check in every day because I had to rely on what was
24 going on there, and I spent an amazing time with them.

25 If it's okay for me to continue, the hardest

1 thing -- the hardest thing for me to come in here with is
2 the fact that I can apologize to you, and I sincerely do. I
3 can stand in front of Mr. Bradford and I can stand in front
4 Mr. Dougherty, in front of this court and show my flaws and
5 let them know that there was mistakes made that I wish I
6 would have controlled.

7 The hardest part for me is the small amount of
8 people that's behind me. My family is here. My friends are
9 here. And yes, as you have reflected and thank you, I am a
10 good man. But for the rest of my life, I have to fight with
11 the desire to apologize, to apologize to these people every
12 day for dragging them through all of this and taking their
13 resource of love and compassion and friendship to its
14 extreme. I have business owners. I have managers of
15 businesses. I have people who have left, with not high
16 incomes, have left their jobs to be here today. And I am
17 sorry they ever had to do that because as much as you give,
18 as much as you put into friendships and relationships in
19 your community, you hope to never have to pull out of that
20 your withdrawal slip.

21 And right now I am doing it, and I heard you say
22 just before me how lucky a person was to have that. I
23 agree. There was a story that was told to me a long time
24 ago where in the end they said if you have -- can count the
25 people who would die for you on one hand, you are a lucky

1 man. And Your Honor, I have got it. I have got many hands
2 out there and many hands at home that I have let down. And
3 I have to spend my days trying to apologize to them for
4 bringing them through that.

5 In the last four years I have lost everything.
6 Cars, homes, savings, land. Those are gone. They are
7 things. They are part of this world. I can't take them
8 with me. I have lost my reputation in our community in a
9 lot of ways and have been in some very uncomfortable
10 situations.

11 I lost a 30-year friendship over this. And I can
12 balance those out and say were they the friends that they
13 said they were.

14 THE COURT: How did you lose a 30-year friendship?

15 THE DEFENDANT: I had a man read on the Internet,
16 ma'am, that I have known since 1985. I have slept at their
17 home. I have prepared them Thanksgiving dinners. I have
18 supported their son through his police work to get into the
19 police department. Called one day just to say, hey, how are
20 you doing, and he says, I have been reading about you. And
21 unfortunately, he took the side to just read paperwork and
22 not remember the man. And when he hung up the phone on me,
23 he said our conversations from this time forward will never
24 happen again and he shut that off. It hurts.

25 THE COURT: It's never easy to find out who your

1 friends are. It's never a bad thing.

2 THE DEFENDANT: No, it's not.

3 THE COURT: Hmm-um.

4 THE DEFENDANT: Because for one that I have
5 missing, I get to cover your courtroom with the rest.

6 The loss of possessions is -- to me is really not
7 the issue. Two years ago my father went in for brain
8 surgery. I was blessed enough to sit with my father during
9 that time and watch him go through a very difficult time
10 where he lost most of his senses during there. He came out
11 of it but still had Alzheimer's and dementia, which brought
12 me into the privilege of coming over here and working with
13 him as many times as I could -- as I could -- excuse me --
14 and to help him with his home to make his life easier. To
15 help my stepmom, Ester, with her life to make it easier and
16 give her a break once in a while. And that time with him
17 comes to a sad end because he passed away in July. We lost
18 our dad. But I got to spend some time with him, and it's
19 something that I will never forget.

20 In giving his eulogy, Your Honor, I was able to
21 reflect back on even thoughts of -- in this life we have so
22 many things that we do, but in leaving this life, we can
23 leave one of two things, and that would be a memory or a
24 legacy. My legacy sits here today. My two children are
25 being comforted by the fact that there is strength that we

1 have in our family.

2 My memory will be to the community or to the lost
3 friends. The rest, fortunately, I have been able to regain
4 since the time of this and even before this on what I have
5 tried to do to correct my life and bring myself into
6 accountability in a lot of ways. Yes, the shower truck
7 serves a lot of people, and we look towards building another
8 one to help the handicapped veterans who can't get up inside
9 that truck to give them dignity, which is at least
10 cleanliness.

11 Last year in December right about this time, it
12 was the 22nd of December, my daughter announced her
13 engagement. It was a very, very happy moment for our
14 family, but at the same time that was the night her mother
15 died shortly hours after she had left.

16 I will never stand down from saying I am a good
17 dad. That's my life. Before anything else is to make sure
18 their needs are met and to make sure they learn from my
19 mistakes, even this mistake right now, and that they learn
20 from it. The day I was indicted, I went to my kids and I
21 explained every issue of this, every deep part of this, even
22 mistakes and what could happen to their dad. So we walked
23 through this last four years with a lot of knowledge. And
24 it's given them strength because they don't have fear.

25 The loss of their mom, though, has put me into now

1 I am a mom and a dad, and anyone can contest -- you can try
2 to be Mr. Mom all you want, but God didn't build us that
3 way. And I am doing my best, and I have times where my
4 daughter can have a breakdown, a meltdown saying I just miss
5 mom, and I have to drop my tool bags on the job to have a
6 cup of coffee or a sandwich to make sure that she's going to
7 keep moving forward.

8 To have my son -- we share the same room. We have
9 been blessed with a room at a dear friend's house that they
10 have allowed us to stay there, so -- but we are in the same
11 room, and there's many times where I would -- I am there in
12 the middle of the night when he still wakes up seeing his
13 mother because he found her when she died. No child should
14 have to do that, but unfortunately, that's where it was. He
15 builds strength on that, but there's still so many times
16 that we are there for counsel and for consoling him.

17 My stepmom, after 42 years of marriage, is alone
18 now, and that's where I spend my time to help her as well,
19 and I would like to continue to do so.

20 Obviously I am standing in front of you asking for
21 grace. Everybody does. I am asking for miracles because
22 everybody does. I am asking you to understand that I broke
23 the rules, I hate to say unknowingly, but I have to say that
24 and cop for it that I did these things.

25 I have goals that I have set aside due to the fact

1 that my freedom could be limited. I have two men sitting in
2 the courtroom today who have offered me positions with their
3 companies to move forward and to start -- I won't insult you
4 by saying I am going to pay back \$3 million but to help me
5 start paying back restitution towards what's happened.

6 And you have seen -- you have seen their
7 testimonies even on the tapes or on letters.

8 I have learned being a finish carpenter and being
9 put in a place where the detail of the beauty of this room
10 would have been done by me, the last touch, the final piece
11 that covers up so many things that could have went wrong
12 before.

13 But you spend your time to perfect the details to
14 make sure the job's done right, and the only reason I bring
15 that up, Your Honor, is because I didn't do that before. I
16 didn't ask enough questions, and in turn, that was not doing
17 what's right.

18 I wish I could have cooperated with Mr. Bradford
19 more. I wish I could have revealed some amazing underlying
20 dirty deeds going on because they are there. But with the
21 caliber of business that I was doing, with the caliber of
22 business that I was doing, I didn't pay attention to what
23 was going on around me either.

24 I can only -- I can only let you know that from
25 this day forward I wasn't a criminal before and I won't be a

1 criminal again.

2 I don't -- my life isn't about taking, but I do
3 want to give back. And if I am given that opportunity, I
4 will continue to serve my community, my family, ten times
5 these friends, and my church. God's given me some amazing
6 gifts, and one of my gifts is to be able to love these
7 people back and to give everything I have for people, and I
8 give God glory for that.

9 Was this -- did this incident portray Christian
10 belief? No, ma'am.

11 Thank you for your time.

12 THE COURT: There is a huge part of me that just
13 doesn't want to believe a thing you said, and I don't
14 believe it. It's false -- it's falsely being humble because
15 you have talked about all your gifts to other people.

16 THE DEFENDANT: Um-hmm.

17 THE COURT: And really what you needed to do today
18 was simply come in here and apologize and let it go. I read
19 everything.

20 THE DEFENDANT: Okay.

21 THE COURT: You have a sense of grandiosity that
22 you are the guy that can fix everything and help everybody
23 and be the big -- the big guy to the rescue. And really
24 about being a friend or a parent or a worker is to say I
25 will just do the best I can do. I am not looking for

1 anything other than to do the best I can do. The best I can
2 do towards my friends. You are not going to save any of
3 them. It's a reciprocal relationship. They are here. You
4 are not drawing on their strength and friendship. They are
5 here because they choose to be here.

6 Your kids are standing by you. They are a
7 fabulous representation in the video. They are impressive
8 kids.

9 THE DEFENDANT: Thank you.

10 THE COURT: But just stand here and be a humble
11 person. You made huge mistakes. They were illegal and they
12 weren't Christian because think of what you were walking
13 people into. If you want to use your community, you were
14 putting people in a position where they were going to be
15 under financial stress. And why? To get another trophy?
16 To get another debit card? Or to get \$200,000 in fees?

17 Look real closely at why and what you told me
18 because it doesn't -- it didn't have a real ring to it. It
19 was a performance.

20 THE DEFENDANT: I am sorry.

21 THE COURT: So actions speak louder than words.
22 How you choose to go forward is how it's going to be viewed.

23 And you could have come in late and still been a
24 helpful person in this, but at the same time, you were --
25 you couldn't own what you did.

1 And you are still not really owning it. And I am
2 not happy that people above you let this system lay in place
3 and that you are the -- you are the guy. You are the
4 glad-handing kind of happy guy they can send out and they
5 could easily say, look what you get. You get the next
6 dazzling object if you sell these many more loans.

7 You know, the nice thing is about people when they
8 say, you know, look what we were able to accomplish. We got
9 you in your first home and you can afford it and you are
10 going to have the rest of your life to do these other
11 things. But wow, and, you know, it goes without saying,
12 look at the loan you sold for the \$1.9 million -- how much
13 money did you make on that or would you have made on that?
14 You knew what was going on.

15 Get straight with people. Get straight with
16 yourself. Get straight with your friends. Just get
17 straight and own it because, you know, did you sit in on the
18 sentencing right before yours?

19 THE DEFENDANT: Yes, I did.

20 THE COURT: Do you think I am going to do anything
21 less than what I did in that case?

22 THE DEFENDANT: No, ma'am, I don't.

23 THE COURT: Did you have a higher role than she
24 had?

25 THE DEFENDANT: I believe so.

1 THE COURT: By far. So what might have been
2 really helpful is to just come in and say hold me
3 accountable. I made mistakes and I am higher up the food
4 chain and I knew better.

5 I am not going to hold it against you that you
6 basically did performance today. And you may mean it. And
7 I think you have thought about it a long time and you have
8 said it with sincerity. But now you really have to mean it.

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: Because you have a lot to pay back to
11 people. \$3 million is a lot of money that the system is
12 going to extract from you and it's going to change your
13 family's life forever because that's -- you are never going
14 to get that paid back.

15 THE DEFENDANT: No.

16 THE COURT: You know what? Payback doesn't come
17 necessarily in the cash. It comes in how you are going to
18 live your life back in your community and what you are going
19 to represent as a human being to your family and to your
20 friends, and that is you are just going to be part of that
21 community. They are going to embrace you when you come
22 back. They are going to help you to the best of their
23 ability, and you are lucky to have a community. You are
24 just incredibly lucky to have a community, and you are going
25 to decide that -- either that you are going to follow the

1 law or that if you are going to follow the values that you
2 talked about so heavily in the paperwork and all your
3 friends talked about, then you are going to actually walk
4 that walk.

5 There's a real struggle in the world right now.
6 Do we worship the almighty dollar or do we worship the
7 ability to take care and make a safety net for the human
8 being.

9 What's the -- that's a constant struggle. What
10 are people about. Well, you got off track and you were
11 about the almighty dollar. And you did some good works. It
12 didn't hurt to be a rainmaker doing those good works and
13 doing community activities. It always helps to build
14 relationships. They teach that in law school. They teach
15 that in business school. They teach that in the medical
16 profession. They teach that in pharmaceutical school. Work
17 it. Work it. Work it. At some point it's really about
18 being in an honorable profession, being a professional and
19 doing the right thing because it isn't about always hustling
20 and selling. It's really about doing the right thing. And
21 if you'd just remember that and understand that, you will
22 have no trouble with this order or for the rest of your
23 life.

24 Now, I hold Mr. Bradford in -- man of his word,
25 and he has come in here clearly. He can't give you credit

1 for your cooperation because you came in late and you didn't
2 have anything to provide. He has indicated that he --
3 there's something ongoing. Again, blurting information out
4 wasn't probably helpful. But when that happens, I won't
5 have any problem signing off on it and giving you the credit
6 for that acknowledgment. And I think in many respects
7 holding people who should be held accountable accountable up
8 the food chain is exactly what needs to happen in this whole
9 thing. That's part of the process is there are people who
10 let things happen and dangled prizes and dangled people with
11 things that led them to get off track in their behavior when
12 they knew better is part of the whole way in which this
13 whole thing got gummed up, people selling nothing for
14 something, and they knew it. And they knew it.

15 So what I am going to do is I am going to follow
16 the guidelines calculations in this case, and I am going to
17 acknowledge that your offense level is a 23, your criminal
18 history category is a I, and it produces an advisory
19 guidelines range of 46 to 57 months.

20 I have looked at all those factors. I have looked
21 at all the issues in this particular case. I think the
22 guidelines with regard to your role and your position and
23 your gatekeeping facility and your importance in this loan
24 service industry requires that the guidelines -- I am not
25 going to deviate from that guideline at this point, but I

1 will, I am telling Mr. Bradford and I am looking at him,
2 that I will accept a modification and I expect to receive
3 one regardless of how -- where that all goes, but I expect
4 that his cooperation, he is doing the best that he can do.
5 And I am giving you that ahead of time because I want you to
6 be fully cooperative with them because it may well affect
7 this.

8 Next, you have two fantastic kids --

9 THE DEFENDANT: I know.

10 THE COURT: -- who have been dealt a raw deal.

11 THE DEFENDANT: Um-hmm.

12 THE COURT: An incredibly raw deal. And yet they
13 are very resilient. And they will be there for you, and
14 they will be accomplished human beings. And that has a lot
15 to do with, you know, your time with them. But I want you
16 to sort of right your own ship. They are important in your
17 life. Making money, giving that time away hasn't been
18 really worth it, has it?

19 THE DEFENDANT: No, ma'am.

20 THE COURT: No. So when you come back, you have a
21 lot to contribute to their well-being, and during this
22 period of time, you need to be just as much of a parent to
23 them as not, and that means you need to build good
24 relationships with your friends so that everybody steps up
25 and they have a support system that stands by them and with

1 them.

2 And what your friends need to know is -- is the
3 following: We are all part of government. Better
4 regulators might have done something different, better
5 people in charge of how the financial system, all of this
6 works because we give up to the rule of law, the rule of
7 law, not the rule of who gets to do what, the rule of law
8 these responsibilities.

9 I am holding you accountable for breaking the law.
10 I am holding you accountable for being in a position of
11 responsibility where you had this extra professional
12 response in a system that could have said stop, no. I am
13 putting my reputation on the line to say that this is wrong.
14 That's what being a professional is about. We don't just
15 pass that buck. It just gets more complicated.

16 But part of the system means you are going to be
17 held accountable, and at this stage because of the
18 calculations because I can't give you the cooperation, I am
19 going to follow the guidelines because that's a body of work
20 that gives me some guidance at this particular moment in
21 time.

22 I am telling you that I want to give you a
23 reduction for a number of reasons, and I will hold off to
24 see where that cooperation leads. And I have repeatedly
25 done that, and I don't have any problem down the road. But

1 just as I sentence people who are in a different situation
2 with a different kind of crime, we hold people accountable.

3 And just as I said at the very beginning, what you
4 did was ridiculous, greed-driven, illegal, bad, damaging to
5 the community, at the same time, you are a lovable, big
6 hearted, big talkin', grandiose thinking, multitalented,
7 good human being. They don't reconcile very easily and
8 that's hard, and that's why you had a hard time talking to
9 me because it's hard, right? It was hard to reconcile how
10 do you describe yourself as the human being when you know,
11 having sat in here a moment ago, about the -- how -- you
12 were like a dissonant -- you weren't even -- I was watching
13 you. You could hardly get it out to me, right? You were
14 choking it out.

15 It would have been just enough to say, I am so
16 sorry. I care about everybody. I will do it better next
17 time. I am just who I am. I have lots of mistakes. I have
18 lots of gifts. Just give me a chance. That's all you
19 needed to do. That's all you needed to do.

20 So use the time to come back to grips with who you
21 really are and what you really can do for that community.

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: And lower that because when you put
24 these grandiose expectations up there, you are going to cut
25 corners and you are going to make lots of mistakes because

1 you think you have to deliver. You know what? All these
2 people are here just because they want to be your friend.
3 And they, as good human beings, want to support somebody in
4 their time of trouble. So don't make it any harder on them.
5 Okay?

6 So I think the guidelines range is such that you
7 will be committed to the Bureau of Prisons for confinement
8 for a period of 46 months.

9 Upon release from confinement, you will have a
10 three-year term of supervised release subject to the
11 standard conditions of supervision adopted by this court and
12 the following special conditions:

13 First, you shall cooperate in the collection of
14 DNA as directed by your probation officer if required by
15 law.

16 Next, you shall not make any application for any
17 loan, enter into any credit arrangement, or enter into any
18 residential or business lease agreement without approval of
19 your probation officer.

20 Next, you shall disclose all assets and
21 liabilities to your probation officer and shall not
22 transfer, sell, give away, or otherwise convey any asset
23 with a fair market value in excess \$500 without approval of
24 your probation officer.

25 Next, you shall pay full restitution in the amount

1 of \$3,606,113.80 jointly and severally with Tyler
2 Fitzsimons, Case No. 9-60165-110 -- 001. Excuse me. And
3 9-60167-001, Shannon Egeland in Case No. 9-60167-002 and
4 Jeremy Kendall, 9-60165-003 to the victims identified in the
5 presentence report.

6 If there's an unpaid balance at the time of your
7 release from custody, it shall be paid at the maximum
8 installment possible and not less than \$50 a month.

9 Your employment shall be subject to approval by
10 your probation officer.

11 You shall authorize release to the U.S. probation
12 officer any and all financial information form by means of
13 execution of a release of a financial information form or by
14 any other appropriate means as directed by your probation
15 officer.

16 You shall maintain a single checking account
17 and/or savings account in your name only. You shall deposit
18 into that account all income, monetary gains, or other
19 pecuniary proceeds and make use of this account for payment
20 of all personal expenses. All other accounts must be
21 disclosed to your probation officer.

22 Finally, you are prohibited from incurring new
23 credit card charges or opening additional lines of credit
24 without approval of your probation officer.

25 I am not imposing a fine because there is a

1 substantial obligation to pay for restitution. I will waive
2 interest on the fine. There is a fee assessment in the
3 amount of a \$100.

4 You entered into a plea agreement that waives all
5 or a part of your rights to appeal. If you wish to file a
6 notice of appeal, you may do so, but it will be governed by
7 your plea agreement.

8 And just as sort of an expectation of where this
9 is going to go, with regard to a reduction, I am going to
10 have in abeyance a 300-hour term of community service so
11 when there's a reduction, I am serious about that there be
12 one and that it be acknowledged. And here's what I want you
13 to look around: You are going to make it to an institution.
14 I want you to look around at all the people in that
15 institution. You know what? A lot of them are really good
16 people who did bad things. Why don't you think about when
17 they come back to the community what you can do to help them
18 come back and be successful because they paid their dues.
19 We could sure use that help in Central Oregon. We have a
20 lot of people that have no services over there, and there's
21 a lot to be done hand in glove with the members of the armed
22 services coming back from one war and facing a very
23 difficult time and very few services and not a lot of
24 outreach from the community.

25 And then the people coming out of prison, many of

1 whom have come from situations that are like war, families
2 that are incredibly abusive, very difficult, very different
3 circumstances. But you know what? Those leaders coming
4 back from the military have a lot to give and those people
5 coming back from prison have a lot of need, and there's a
6 lot of opportunity to do a lot of good things for a lot of
7 people in your own community and giving back, and I am going
8 to think that you, along with all your friends, might be
9 able to start there and maybe come back and offer people who
10 took a lot out of that community a way to give back because
11 there are a lot of hurting people in Central Oregon with
12 nothing left, with nothing. Still that's home. Right?

13 Do you have any questions?

14 MR. FRIEDMAN: Your Honor, we would ask for a
15 referral to Sheridan Camp and 120 days to report.

16 THE COURT: I will make that referral. 120 days.

17 Now, you might chat with Ms. Robb. You know, we
18 have a couple other recommendations. It's going to be
19 complicated. They will make some calls and make some
20 choices for family purposes. It would be my hope that you
21 would end up there. And there may be a set of priorities
22 and there may be a way to stagger people's time there. But
23 you know, it's up to the Bureau of Prisons, and we can only
24 weigh in to the extent that we attempt to talk about what
25 will work and what might not work in a particular case.

1 Okay? Anything else?

2 MR. BRADFORD: Your Honor, I just want to clarify
3 something about the Rule 35. I don't want the defendant to
4 use it as some sort of guarantee. I want him to understand
5 that he still has to do some work. It's just not -- I know
6 the court's directed me to do it if he cooperates. It's not
7 a guarantee. He still needs to do some work.

8 THE COURT: Um-hmm. No. That's why -- but I also
9 wanted to say that depending on -- I am not ordering right
10 now community service.

11 MR. BRADFORD: I understand.

12 THE COURT: But depending on what you recommend, I
13 think that needs to be part of the equation.

14 MR. BRADFORD: I just want him to understand that
15 it's still going to require work on his part. There's
16 nothing guaranteed at this stage.

17 THE COURT: Today what I did was -- I don't have
18 the flexibility and wouldn't take it because of the
19 cooperation component at this point, but my hope was to
20 incentivize you. All right? Do you have any questions?

21 THE DEFENDANT: No, ma'am.

22 MR. BRADFORD: That's perfect. Thank you, Your
23 Honor.

24 THE COURT: They have to bring it to me. I can't
25 do it. And I am encouraging him to bring me something that

1 is substantial if you are able to give him something that's
2 worthy.

3 THE DEFENDANT: I hope so.

4 MR. BRADFORD: I have filed them in the past. The
5 court knows that. And the court knows I will file one in
6 this case if he continues to work with us. So thank you.

7 THE COURT: Thank you.

8 MR. FRIEDMAN: Nothing else.

9 THE COURT: All right.

10 *(The proceedings were concluded this*
11 *12th day of December, 2013.)*

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1 I hereby certify that the foregoing is a true and
2 correct transcript of the oral proceedings had in the
3 above-entitled matter, to the best of my skill and ability,
4 dated this 13th day of January, 2014.

5
6 /s/Kristi L. Anderson

7 Kristi L. Anderson, Certified Realtime Reporter
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